

## RESPONSE TO DEFENDANT'S MOTION FOR MODIFICATION OF SENTENCE

The Superior Court has no inherent power to modify lawfully-imposed sentences; Rule 23.4 only allows the court to modify illegal sentences or sentences imposed illegally.

The State of Arizona, by the undersigned Deputy County Attorney, respectfully requests this Court to deny the defendant's Motion for Modification of Sentence for the reasons stated below.

The Superior Court has no inherent power to modify a lawfully-imposed sentence. *State v. Falkner*, 112 Ariz. 372, 374, 542 P.2d 404, 406 (1975); *State v. House*, 169 Ariz. 572, 573, 821 P.2d 233, 234 (App. 1991). "Rule 24.3 was not intended to give trial courts a chance to second guess themselves." *House*, *id.* at 574, 821 P.2d at 235.

The Superior Court's only power to modify a sentence flows from Rule 24.3, Ariz. R. Crim. P. *Falkner*, *id.*; *State v. Glasscock*, 168 Ariz. 265, 267, 812 P.2d 1083, 1085 (App. 1990). That Rule provides:

The court may correct any unlawful sentence or one imposed in an unlawful manner within 60 days of the entry of judgment and sentence but before the defendant's appeal, if any, is filed.

An unlawful sentence is one that is outside the range allowed by statute. *Glasscock*, *id.*; *State v. Suniga*, 145 Ariz. 389, 393, 701 P.2d 1197, 1201 (App. 1985). "A sentence imposed in an unlawful manner is one imposed without due regard to the procedures required by statute or Rule 26 of the Arizona Rules of Criminal Procedure." *State v. House*, 169 Ariz. 572, 573-74, 821 P.2d 233, 234-35 (App. 1991), quoting *Glasscock*, *supra*.

In this case, after a mitigation hearing, this Court sentenced the defendant to thirty months in the Arizona Department of Corrections for theft, to be followed by seven years of probation for another theft count, and ordered the victim to pay restitution to both victims. The sentence imposed was within the range provided by statute, and the defense does not allege that the sentence was unlawful or that this Court imposed the sentence in an unlawful manner. Therefore, this Court lacks the authority to modify the lawful sentence, lawfully imposed. The State asks this Court to deny the defendant's motion to modify sentence.